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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,812	11/13/2000	Patrick D. Smith	PD05924AMP01	9554

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EXAMINER

BURD, KEVIN MICHAEL

ART UNIT	PAPER NUMBER
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2631

DATE MAILED: 04/01/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/712,812

Applicant(s)
SMITH ET AL

Examiner
Kevin Burd

Art Unit
2631



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 13, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 2631

DETAILED ACTION

1. This office action, in response to the request for continued examination (RCE) and amendment filed 2/13/2003, is a non-final office action.

Response to Arguments

2. The objection to the declaration is maintained.
3. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new grounds of rejection.

Oath/Declaration

4. Applicant discloses the instant application is a continuation in part of two US applications. There is no mention of claimed priority in the declaration. Clarification is requested if Applicant is claiming priority on these applications. If priority is claimed, correction of the declaration is required.

Specification

5. The abstract of the disclosure is objected to because the title, which appears above the abstract on line 1 should be deleted. Correction is required. See MPEP § 608.01(b).

Art Unit: 2631

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5, 7-9, 11-20, 22-24, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Goodman (US 5,822,299).

Regarding claim 1, Goodman discloses a telecommunications network. Paths are monitored to determine transmission quality and the equipment chooses the better of these paths based on the transmission quality measurement (column 1, lines 22-28). The paths are compared to determine the better path (abstract). The information being conveyed from node 11 to the unlabeled node to the right of node 11b, will have a shared path of the path from node 11b to the unlabeled node and a non shared path of 12b or 12a plus 12c. The best path will be chosen (figure 1 and column 3, lines 55-65). The quality measured for each path will correspond to the measured path.

Regarding claim 2, as stated above, Goodman discloses the transmission quality of each path is compared and the best path is selected.

Art Unit: 2631

Regarding claim 3, as stated above, the equipment monitors the transmission quality. The equipment determines if errors have occurred in path data and determines the quality (column 3, lines 42-53).

Regarding claim 4, as stated above, the equipment monitors the transmission quality. The equipment determines if errors have occurred in path data and determines the quality (column 3, lines 42-53).

Regarding claim 5, the paths were described in the above paragraph.

Regarding claim 7, a component of the communication path is a shared communication path as stated above.

Regarding claim 8, a component of the communication path is a non-shared communication path as stated above.

Regarding claim 9, communication continues throughout the measuring of quality. The process of measuring quality is monitoring the amount of errors that occur to the data path (column 3, lines 42-54).

Regarding claim 11, the quality of the transmission paths is monitored for all data transmitted over the paths.

Regarding claim 12, Goodman discloses a telecommunications network. Paths are monitored to determine transmission quality and the equipment chooses the better of these paths based on the transmission quality measurement (column 1, lines 22-28).

Art Unit: 2631

The information being conveyed from node 11 to the unlabeled node to the right of node 11b, will have a shared path of the path from node 11b to the unlabeled node and a non shared path of 12b or 12a plus 12c. The best path will be chosen (figure 1 and column 3, lines 55-65). The quality measured for each path will correspond to the measured path.

Regarding claim 13, as stated above, Goodman discloses the transmission quality of each path is compared and the best path is selected.

Regarding claim 14, as stated above, the equipment monitors the transmission quality. The equipment determines if errors have occurred in path data and determines the quality (column 3, lines 42-53).

Regarding claim 15, as stated above, the equipment monitors the transmission quality. The equipment determines if errors have occurred in path data and determines the quality (column 3, lines 42-53).

Regarding claim 16, a component of the communication path is a shared communication path as stated above.

Regarding claim 17, a component of the communication path is a non-shared communication path as stated above.

Regarding claim 18, the quality of the transmission paths is monitored for all data transmitted over the paths.

Art Unit: 2631

Regarding claim 19, Goodman discloses a telecommunications network. The nodes in figure 1 contain a plurality of transmitters and a plurality of receivers. Paths are monitored to determine transmission quality and the equipment chooses the better of these paths based on the transmission quality measurement (column 1, lines 22-28). The information being conveyed from node 11 to the unlabeled node to the right of node 11b, will have a shared path of the path from node 11b to the unlabeled node and a non shared path of 12b or 12a plus 12c. The best path will be chosen (figure 1 and column 3, lines 55-65). The quality measured for each path will correspond to the measured path.

Regarding claim 20, as stated above, Goodman discloses the transmission quality of each path is compared and the best path is selected.

Regarding claim 22, as stated above, the equipment monitors the transmission quality. The equipment determines if errors have occurred in path data and determines the quality (column 3, lines 42-53).

Regarding claim 23, the common receiving point can be any number of nodes. If the common receiving point was to become node 11b in figure 1, the common receiving point would be receiving data from a plurality of directions.

Regarding claim 24, the paths were described in the above paragraph. In this description the common receiving point receives data from only one direction.

Art Unit: 2631

Regarding claim 28, the signal will pass through a plurality of node. These nodes are hubs allowing the data to select one of a plurality of different paths.

Regarding claim 29, the signal will pass through a plurality of node. These nodes are hubs allowing the data to select one of a plurality of different paths.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman (US 5,822,299) in view of Beser et al (US 6,523,068).

Regarding claim 6, Goodman discloses the telecommunications network stated above. Goodman does not disclose the communication network comprises cable modems. Beser discloses cable modems are common network devices. Cable modems offer customers higher speed connectivity to the Internet, an intranet and LANs (column 5, lines 1-13). It would have been obvious for one of ordinary skill in the art at the time of the invention to incorporate the cable modems of Beser into the network of Goodman for the reasons stated above.

Art Unit: 2631

Regarding claim 25, Goodman discloses the telecommunications network stated above. Goodman does not disclose the communication network comprises cable modem termination systems. Beser discloses cable modem termination systems are common network devices. Cable modem termination systems offer customers higher speed connectivity to the Internet, an intranet and LANs (column 5, lines 1-13). It would have been obvious for one of ordinary skill in the art at the time of the invention to incorporate the cable modem termination systems of Beser into the network of Goodman for the reasons stated above.

Regarding claim 26, Goodman discloses the telecommunications network measures the quality of service in the network.

Regarding claim 27, Goodman discloses the telecommunications network stated above. Goodman does not disclose the communication network comprises cable modem termination systems. Beser discloses cable modem termination systems are common network devices. Cable modem termination systems offer customers higher speed connectivity to the Internet, an intranet and LANs (column 5, lines 1-13). It would have been obvious for one of ordinary skill in the art at the time of the invention to incorporate the cable modem termination systems of Beser into the network of Goodman for the reasons stated above. These cable modem termination systems are connected via cable television networks (column 5, lines 1-13).

Art Unit: 2631

10. Claims 10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman (US 5,822,299) in view of Freeburg (US 5,095,535).

Regarding claim 10, Goodman discloses the telecommunications network stated above. Goodman does not disclose the use of a memory for storing the quality of service estimates in a memory. Freeburg discloses, in column 5, line 54 to column 6, line 15, the storage of transmission path estimates in a memory. This allows reference to previous path estimates to be available and it is possible to compare more than one path estimate to other path estimate so the best path is selected. The time for comparison would be reduced. Therefore it would have been obvious for one of ordinary skill in the art at the time of the invention to incorporate the memory of Freeburg into the network of Goodman for the reasons stated above.

Regarding claim 21, Goodman discloses the telecommunications network stated above. Goodman does not disclose

Contact Information

Any response to this action should be mailed to:

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or faxed to:

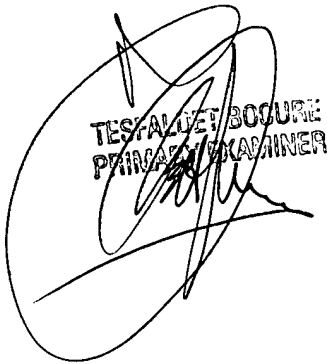
(703) 872-9314, (for formal communications intended for entry or for informal or draft communications, please label "PROPOSED" or "DRAFT")

Art Unit: 2631

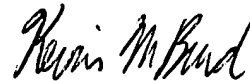
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Burd, whose telephone number is (703) 308-7034. The Examiner can normally be reached on Monday-Thursday from 9:00 AM - 6:00 PM.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3800.



TESTALUET BOCURE
PRINCE EXAMINER



Kevin M. Burd
PATENT EXAMINER
March 17, 2003